



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNC, OLC

Introduction

This hearing was set to deal with a tenant's Application for Dispute Resolution to cancel a One month Notice to End Tenancy for Cause ("1 Month Notice") and for orders for the landlord to comply with the Act, regulations, or tenancy agreement.

Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

At the outset of the hearing, I confirmed service of hearing materials upon each other and I admitted their materials into evidence for consideration in making this decision.

Issue(s) to be Decided

1. Should the 1 Month Notice dated December 12, 2020 be upheld or cancelled?
2. Is it necessary to issue orders for the landlord to comply with the Act, regulations, or tenancy agreement?
3. Award of the filing fee.

Background and Evidence

A tenancy between the landlord and one of the tenants started on December 1, 2014 and the monthly rent was set at \$2000.00. In January and February 2020, a new tenancy agreement was executed between the two named tenants and the landlord and the rent was set at \$2300.00 payable on the first day of every month. Both parties provided consistent positions that the most recently executed tenancy agreement applies and from hereon in I refer to the most recently executed tenancy agreement as the tenancy agreement.

Notice to End Tenancy

On December 12, 2020 the landlord issued a 1 Month Notice to the tenants and served it to the tenant, in person, on that same date. The tenants filed to dispute the 1 Month Notice within 10 days of receiving it. Both parties provided me with a copy of the 1 Month Notice and I noted that they were identical copies. The 1 Month Notice is an old two-page form produced by the Residential Tenancy Branch in 2011 and does not contain a section for "Details of Cause". Nor, did the landlord attach a page that provides for "Details of Cause".

I informed the parties that the 1 Month Notice served by the landlord is not enforceable since it is not in the approved form and it does not contain section that provides for Details of Cause as does the current approved form. As such, I cancelled the 1 Month Notice on the basis that the 1 Month Notice is unenforceable on the sole basis it fails to meet the form and content requirements of the Act. I informed the parties that I would not here the merits or reasons for issuance of the 1 Month Notice. Rather, I informed the parties that the landlord may issue another 1 Month Notice to the tenants, in the approved form, if she remains of the position that she has cause to end the tenancy. Should the tenants receive another 1 Month Notice and they would be at liberty to dispute the notice and a hearing would be held. The parties indicated they understood.

Order for compliance – Rent increase

The parties provided consistent testimony that the landlord sent the tenant a text message requiring them to pay rent of \$3000.00 per month starting November 1, 2020 and the tenants did pay \$3000.00 for the month of November 2020. For December 2020 onwards the tenants have paid \$2300.00 per month.

The tenants seek authorization to deduct the \$700.00 overpayment made in November 2020 from rent otherwise payable.

The landlord acknowledged that she did not issue a Notice of Rent Increase and that she required the increased rental amount via text message. The landlord stated the reason she required additional rent money is because the tenants are renting rooms out.

In viewing the tenancy agreement, I noted that there is no term in the tenancy agreement that provides for additional rent payable if there are additional occupants. The landlord conceded that to be accurate.

Order for compliance -- requirement to pay for sewer

The tenant pointed to the text message that provided for the rent increase of \$700.00 that also includes a statement that the landlord would require the tenants to pay for sewer; however, there is no amount specified. The landlord stated that she does not yet know how much the sewer bill is because she has not received the sewer bill. Both parties provided consistent statements that the landlord has demanded payment for water bills and the tenants have paid it; however, there has been no written demand for sewer yet.

The tenancy agreement indicates that there are no utilities included in rent but sewer is not a utility specified on the form used by the landlord. Both parties provided consistent statements that the tenants pay for their own utilities.

Analysis

Upon consideration of everything before me, I provide the following findings and reasons.

Notice to End Tenancy

Section 52 of the Act provides that a notice to end tenancy must meet form and content requirements in order to be effective. Among other things, in order for a notice to end tenancy to be effective it must be in the approved form when given by a landlord.

The Director has the authority to approve forms pursuant to section 10 of the Act. Section 10 provides:

Director may approve forms

10 (1) The director may approve forms for the purposes of this Act.

(2) Deviations from an approved form that do not affect its substance and are not intended to mislead do not invalidate the form used.

The 1 Month Notice to End Tenancy for Cause that is in the current approved form is three pages and provides a section entitled Details of Cause. In this Details of Cause section it states:

Describe what, where and who caused the issue and include dates/times, names etc. This information is required. An arbitrator may cancel the notice if details are not provided.

The 1 Month Notice that is the subject of this proceeding was an old form that does not include a Details of Cause section. Nor, did the landlord provide any Details of Cause on an attached page. As such, I find the lack of Details of Cause affects the substance of the Notice to End Tenancy and I find the Notice to End Tenancy served upon the tenants to be ineffective and unenforceable.

In light of the above, I grant the tenant's request that I cancel the 1 Month Notice to End Tenancy for Cause dated December 12, 2020 and the tenancy continues at this time, until such time it legally ends.

It is important to note that I did not hear and I have made no finding as to whether the landlord has a basis under the Act for ending the tenancy since I cancelled the 1 Month Notice on the basis it did not comply with the form and content requirements. As I informed the parties during the hearing, the landlord remains at liberty to issue another Notice to End Tenancy, in the approved form, should the landlord remain of the position she has a basis to end the tenancy.

Order for compliance – Rent increase

Part 3 of the Act (sections 40 through 43) provides for the way a landlord may increase the rent.

Although the landlord explained she increased the rent because the tenants were renting out rooms or had additional occupants, the tenancy agreement does not provide for an additional amount of rent where there are additional occupants.

Section 40 of the Act permits a landlord to require additional rent if there are additional occupants provided the landlord is authorized to do so under the tenancy agreement (see section 40 of the Act).

Since the tenancy agreement does not provide for an additional amount of rent for an additional occupant, the landlord's reason for seeking additional rent from the tenant is irrelevant. Accordingly, the landlord may only increase the rent provided the rent increase complies with sections 42 and 43 of the Act.

Essentially, sections 42 and 43 provide that a rent increase must be accomplished by serving the tenant with approved form at least three months in advance and the amount cannot exceed certain limitations, which are:

- (a) calculated in accordance with the regulations,
- (b) ordered by the director on an application under subsection (3), or
- (c) agreed to by the tenant in writing

Section 43(5) of the Act provides for what happens if a landlord collects an unlawful rent increase:

- (5) If a landlord collects a rent increase that does not comply with this Part, the tenant may deduct the increase from rent or otherwise recover the increase.

The landlord put the tenant on notice that she would require an additional \$700.00 in without three months advance notice, without serving a Notice of Rent Increase in the approved form and an amount that does not comply with section 43. It was agreed that the tenants did pay the \$700.00 increase for the month of November 2020.

Accordingly, I find the tenants are entitled to recover the unlawful rent increase by deducting it from rent otherwise payable in keeping with section 43(5) of the Act.

In deducting \$700.00 from a subsequent month's rent payment to recover the unlawful rent increase collected by the landlord, the landlord is ordered to consider the rent paid in full.

Order for compliance – requirement to pay for sewer

Where a landlord requires the tenant to pay the landlord for utilities, section 46 of the Act provides that the landlord must serve the tenant with a written demand for payment of the utility and if the tenant does not pay the utility within 30 days of receiving the written demand the landlord may serve the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities.

In this case, the landlord sent a text message putting the tenant on notice the she expects the tenant to pay for sewer at the property; however, a tenant's obligation is provided in the tenancy agreement and not by way of a text message.

If the landlord is of the position the tenant is required to pay for sewer pursuant to their terms of tenancy, the landlord would be required to give the tenant a written demand for payment, including the amount payable. In this case, the landlord has not yet given the tenants a written demand or specified the amount payable. As I informed the parties during the hearing, sending text messages is not a recognized way of serving a written document and the text message is unenforceable against the tenant.

I strongly suggest the parties try to clarify whether the tenants are required to pay for sewer based on their terms of tenancy if they agree they would be well served to amend the tenancy agreement in writing. If the parties are in dispute as to whether the tenants are required to pay for sewer and the landlord issues a written demand for payment for sewer the tenants may seek further resolution by filing an Application for Dispute Resolution.

Filing fee

The tenant's application had merit and I award the tenants recovery of the \$100.00 filing fee they paid for their application. The tenants are authorized to deduct \$100.00 from a subsequent month's rent payment in satisfaction of this award and in doing so the landlord must consider the rent paid in full.

Conclusion

I have cancelled the 1 Month Notice dated December 12, 2020 as it does not comply with the form and content requirements of the Act and the tenancy continues at this time. I did not hear the merits or reasons for issuance of the 1 Month Notice and the landlord is at liberty to issue another 1 Month Notice, in the approved form, if she remains of the position she has a basis for ending the tenancy for cause.

I have determined the tenant has paid and the landlord collected an unlawful rent increase of \$700.00 and the tenant is entitled to deduct \$700.00 from a subsequent month's rent to recover the overpayment.

I have also authorized the tenants to deduct \$100.00 from a subsequent month's rent payment to recover the filing fee.

In deducting \$700.00 and \$100.00 from a subsequent month's rent payment to recover the unlawful rent increase and the filing fee, the landlord is ordered to consider the rent paid in full.

Information concerning the requirements for a landlord to demand payment of utilities from a tenant were provided to the parties. I have determined that the landlord has only sent a text message to the tenant concerning sewer charges and demands by way of text message are improper and not enforceable.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 17, 2021

Residential Tenancy Branch